



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 16, 1996

Ms. Mary Keller  
Senior Associate Commissioner  
Legal and Compliance Division  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR96-1472

Dear Ms. Keller:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 100164.

The Texas Department of Insurance (the "department") received several detailed open records requests for information concerning certain automobile insurance policies, statutes, and department regulations and bulletins. You state that "some of the requested information will be provided to [the requestor]," but assert that "some of the remaining requested information may involve a privacy or property interest" of various third party insurance companies. You have submitted representative samples of the requested information. Pursuant to section 552.305 of the Government Code, ask whether this information is excepted from disclosure.

Pursuant to section 552.305, this office notified those companies that may have a proprietary or privacy interest in information that is responsive to the request. This office informed these companies of the request, solicited arguments regarding whether the information requested is confidential, and informed the companies that if they failed to respond, this office would assume they had no proprietary interests in the information at issue. Two of the companies that were notified responded to this office and their arguments are addressed below. With regard to the remaining companies that did not respond, there is no basis for withholding the requested information submitted by these companies and the department must release this information.

Representatives of Allstate Insurance Group ("Allstate") and Texas Farmers Insurance Company and the Farmers Insurance Group ("Farmers") responded to this office and assert that certain information that was submitted to the department is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 excepts from disclosure "[a] trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." The exception is divided into two parts: (1) trade secrets and (2) commercial or financial information.

In Open Records Decision No. 639 (1996) the Attorney General held that the case of *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), which interprets exemption four of the federal Freedom of Information Act ("FOIA"), was a "judicial decision" for purposes of section 552.110. Consequently, if a governmental body or other entity can meet the test established in *National Parks & Conservation Ass'n*, the information may be withheld from disclosure. To be held confidential under *National Parks & Conservation Ass'n*, information must be commercial or financial, obtained from a person, and privileged or confidential. *National Parks & Conservation Ass'n*, 498 F.2d at 766. To succeed with a claim under the commercial or financial information portion of section 552.110, the party seeking to prevent disclosure must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure. Open Records Decision No. 639 (1996) at 4.

We conclude that both Allstate and Farmers have established that certain information is protected as commercial or financial information under the *National Parks* test that was adopted in Open Records Decision No. 639 (1996).<sup>1</sup> Allstate stated that it does not object to the release of certain information. We conclude that the department may withhold under section 552.110 the remaining information pertaining to Allstate. We have marked the information relating to Farmers that the department may withhold as commercial or financial information under section 552.110.<sup>2</sup>

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<sup>1</sup> Both Allstate and Farmers argue that the information they submitted should be protected from disclosure under the standard set forth in *Critical Mass Energy Project v. Nuclear Regulatory Commission*, 975 F.2d 871 (D.C. Cir. 1992), *cert. denied*, 113 S.Ct. 1579 (1993). Because we find that the both Allstate and Farmers have sufficiently established that the information is commercial or financial information that is protected under *National Parks* and Open Records Decision No. 639 (1996), we do not address the applicability of the standard set forth in *Critical Mass*. Additionally, we do not address the department's other arguments against disclosure.

<sup>2</sup> We note that among the sample documents that Farmers argued were confidential were brochures and other information that appears to have been made available to customers of Farmers. Also included was a letter from the department to Farmers expressing "concerns" of the department regarding a certain Farmers program. Because this information has either been disclosed to or was created by third parties, it is not confidential information and must be released to the requestor. We have marked these documents as well.

In reaching our conclusion, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Robert W. Schmidt  
Assistant Attorney General  
Open Records Division

RWS/ch

Ref.: ID# 100164

Enclosures: Submitted documents

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